

\$2,132.62, representing reimbursement of compensation paid him for work with the Bureau of Federal Credit Unions of this Department for employment during the period of January 3, 1956, until October 6, 1956.

In the course of our review of this case we developed a statement of facts which has been enclosed for your consideration.

In general, this Department has favored private relief bills only when there are strong equities for making a special exception from the general rule of law which applies in the given case and when the particular case is either unique or is so unusual that a private relief act will not do violence to the basic principle of equal legal treatment for all persons under like circumstances. In the light of the facts outlined in the enclosure, we would not object to favorable consideration of this bill by the Congress, especially in view of the fact that otherwise the Government would get a windfall by keeping both the benefit of Mr. Brohard's services and the fees collected therefor, and that return of the salary for almost a year's work would be a severe penalty and might work a hardship on him. Your committee is, of course, in a better position than this Department to determine whether the precedents for private-relief legislation in dual-employment law cases are such as to make the present case no less deserving.

We assume that enactment of such a bill as the instant one would be construed to relieve the certifying and disbursing officers of liability on account of the technically illegal payments made to Mr. Brohard. However, in order to avoid any doubt on this point, we suggest that, if the bill is favorably considered, a sentence along the following lines be added to the bill: "In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for any amount disbursed to Dwight J. Brohard for which relief from liability is accorded to him by this Act."

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

M. B. FOLSOM, *Secretary*.

FACTUAL INFORMATION DEVELOPED WITHIN THE DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE IN REVIEW OF CASE OF DWIGHT
J. BROHARD

1. Dwight J. Brohard was employed as a Federal credit-union examiner, GS-7, \$4,525 per annum in the Bureau of Federal Credit Unions of the Social Security Administration of this Department from January 3 to October 6, 1956.

2. He was appointed as a career-conditional employee subject to completion of a 1-year probationary period.

3. Mr. Brohard, a regular Navy officer retired for length of service, received during the period of employment as a Federal credit-union examiner a total of \$2,132.62 in salary. This is the amount specified in H. R. 7203, bill for the relief of Dwight J. Brohard. His retired pay was \$3,861 per year.

4. Mr. Brohard was paid from fees collected from Federal credit unions on the basis of his examiner services. The fees so collected exceeded the disbursement for his salary and reimbursement for travel expenses while on official travel status.

5. His services were entirely satisfactory and would have been continued if he were eligible for Federal employment.

6. Under the so-called dual-employment statute (act of July 31, 1894, 5 U. S. C. 62), as interpreted by decisions of the Comptroller General, Regular officers retired for reasons other than disability may not be appointed to or hold a civilian office or position with the Federal Government, if either the rate of retired pay or the rate of compensation fixed for the civilian office or position is \$2,500 or more per year. It has further been ruled that this disqualification applies even when the compensation for civilian employment comes from nonappropriated funds. Mr. Brohard's employment with, and receipt of salary from, the Bureau was, therefore, illegal, even though salaries and expenses incurred by the Bureau are defrayed from fees collected by the Bureau from Federal credit unions under its jurisdiction. The facts from which his disqualification may be deduced were disclosed in his application for civilian employment (form 57) in which he stated that he was "Retired from United States Navy after 21 years' service. Now in receipt of retired pay," and in his appointment affidavit (form 61), in which he referred to "Regular Navy retirement." The disqualification was evidently overlooked in processing his application, perhaps because of the confusing and inherently inconsistent patchwork of dual-employment and dual-compensation laws and of the various exceptions engrafted and interpretations placed on them.

7. The explanation of the dual-employment and dual-compensation laws, which was sent to retired naval officers (presumably including Mr. Brohard), by the Commandant of the 12th Naval District (12 ND Notice 12050) after the date of Mr. Brohard's application but shortly before his appointment to civilian employment, erroneously stated that the dual-employment law was limited to permanent civilian positions and that such an officer could accept a temporary position if the combined military retired pay and civilian salary did not exceed \$10,000 (the limit of the dual-compensation law). Statements of Mr. Brohard in our files indicate that he regarded his civilian "conditional career" appointment as "temporary" during the 1-year probationary period and therefore as a "temporary position" in the above-mentioned sense. He was, however, hired for a permanent position (subject to the usual probationary period) and he did not at the time he applied for the position bring to the attention of the employing agency the fact that he desired only temporary employment; had he done so he may not have been hired at all, and certainly not for a permanent position.

8. When he received with one of his monthly retired pay checks an explanation of the dual-employment law, which showed no exception for temporary positions, he came forward and inquired of the Navy as to his right and, upon being referred to this Department, submitted the matter for decision to his civilian superiors, with the result that his employment was terminated.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE REGIONAL DIRECTOR,
San Francisco, Calif., October 22, 1956.

Mr. DWIGHT J. BROHARD,
Alameda, Calif.

DEAR MR. BROHARD: We regret to advise you that because of your status as a Navy officer retired under the provisions of title 34, United States Code Annotated, section 410 (b), with retired pay in excess of \$2,500 per year, your employment with our Department was and is prohibited by the provisions of title 5, United States Code Annotated, section 62. (See 35 Comp. Gen. 657.)

The Comptroller General of the United States has ruled that the appointment of a retired officer to a civilian position in violation of title 5, United States Code Annotated, section 62, is void from the beginning, that the entire payment of civilian compensation from the date of appointment is illegal and that the employee must be charged with the entire salary of the civilian position paid him from the date of appointment. (See 21 Comp. Gen. 1129.)

Accordingly, we must ask that you refund to the United States the amount of compensation paid you for your position in this Department. The balance due on this account is \$2,132.62, computed as follows:

	Gross	Retire- ment	Tax	Insur- ance	Net
Salary paid (total): Jan. 3-July 28, 1956, at \$3,670; July 29-Oct. 6, 1956, at \$4,525.....	\$2,973.02	\$178.38	\$168.10	\$21.25	\$2,605.29
Less check for pp-20-56 (Sept. 23-Oct. 6) canceled.....	149.45				149.45
Adjustment on current payroll for total deductions.....	367.73	178.38	168.10	21.25	0
Travel vouchers applied: September 1956, \$241.44; Oct. 1-12, 1956, \$81.78.....	323.22				323.22
Balance to be refunded.....	2,132.62				2,132.62

Your remittance should be by cashier's check or money order payable to DHEW, Region IX, and should be mailed to this office promptly.

Sincerely,

F. W. HUNTER, *Regional Director.*

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